

Before the
Federal Communications Commission
Washington, D.C. 20554

ORIGINAL

In the Matter of)	
)	
Request for Waiver by)	
)	
Lynn Public Schools)	File No. SLD-258835
Lynn, Massachusetts)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER**Adopted: November 4, 2003****Released: November 5, 2003**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1 The Telecommunications Access Policy Division has under consideration a request filed by Lynn Public Schools (Lynn), Lynn, Massachusetts, seeking a waiver of the Commission's rules governing the schools and libraries universal service support mechanism.¹ Specifically, Lynn requests waiver of the January 18, 2001 filing deadline for Funding Year 2001.² For the reasons set forth below, we deny the Lynn's Waiver Request.

2 In the decision letter, Schools and Libraries Division rejected Lynn's FCC Form 471 application for being incomplete.³ In its appeal to the Commission, Lynn argues that it was prevented from meeting the deadline because of a server error.⁴ Lynn states that it attempted to file its application electronically on January 18, 2001, but was prevented from doing so by a server problem with the SLD website.⁵ In support of that assertion, Lynn states that it phoned SLD and was told that its complaint would be noted on SLD's logs.⁶ Lynn requests a waiver of the Funding Year 2001 waiver window deadline.⁷

¹ Letter from Gerard Fallon, Lynn Public Schools, to Federal Communications Commission, filed February 22, 2002 (Waiver Request). Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Universal Service Administrative Company (Administrator) may seek review from the Commission. 47 C.F.R. § 54.719(c).

² See Waiver Request.

³ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Gerrard Fallon, Lynn School District, dated March 22, 2001 (Funding Year 4 Form 471-Rejection Letter).

⁴ Waiver Request.

⁵ Waiver Request. See also FCC Form 471, Lynn Public Schools, initiated January 18, 2001 (electronic portion).

⁶ Waiver Request.

⁷ *Id.*

3 A waiver from the Commission is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.⁸ Lynn argues that a SLD server problem prevented it from filing a timely application.⁹ Lynn notes that it called SLD, but Lynn provides no further evidence to support this assertion.¹⁰ SLD records indicate that Lynn phoned the day after the filing window closed to state that an “internal server error” prevented the school from filing its application.¹¹ SLD, however, has no evidence of such a problem with its website. In the past we have granted waivers for SLD server errors, but only if the record contains evidence of such problems.¹² Because Lynn has failed to provide evidence of a SLD server error, special circumstances do not warrant granting a waiver of the filing deadline.

4 Additionally, we note for the record that applicants who filed electronically must also have completed and mailed to SLD a paper copy of the Block 6 Certification, completed and signed.¹³ The record shows that Lynn failed to submit a Block 6 Certification.¹⁴ Thus, Lynn’s arguments relating to a server error fail to address the problem of the missing Block 6 Certification. Therefore, we deny Lynn’s Waiver Request.

⁸ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*), see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (stating that the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis), *cert denied*, 409 U.S. 1027 (1972).

⁹ Waiver Request

¹⁰ *Id.*

¹¹ Phone contact log, Schools and Libraries Division, January 19, 2001

¹² See e.g., *Request for Waiver by Bennett County School District 3-1, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-196833, CC Dockets No. 96-45 and 97-21, Order, 17 FCC Rcd 8603 (Wireline Comp. Bur. 2002) (granting waiver where applicant provided evidence of server problems). But see *Request for Waiver by Scottsdale Horizons School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-198744, CC Dockets No. 96-45 and 97-21, Order, 17 FCC Rcd 654 (Com. Car. Bur. 2002) (denying waiver request where there was no evidence of failure of the SLD website).

¹³ Block 6 is the section of the FCC Form 471 where applicants must sign and make certifications required under program rules. See Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000).

¹⁴ See Funding Year 4 Form 471 – Rejection Letter

5 ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Waiver Request filed by Lynn Public Library, Mt. Victory, Ohio, on January 29, 2002, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Mark G. Seifert". The signature is written in a cursive, flowing style.

Mark G. Seifert
Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau